

IN THE COURT OF APPEALS OF IOWA

No. 3-1185 / 13-1188
Filed January 9, 2014

**IN THE INTEREST OF A.M.C.,
Minor Child,**

**L.P.K., Mother,
Petitioner,**

**C.C., Father,
Appellant.**

Appeal from the Iowa District Court for Warren County, Mark F. Schlenker,
District Associate Judge.

A father appeals the termination of his parental rights pursuant to Iowa
Code section 600A.8(3) (2011). **AFFIRMED.**

Dawn M. Bowman of Bowman Law Office, Pleasantville, for appellant
father.

Jason S. Rieper, Des Moines, for appellee mother.

Kimberly A. Graham of Graham Law Collaborative, Indianola, attorney and
guardian ad litem for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

A father appeals the termination of his parental rights pursuant to Iowa Code section 600A.8(3) (2011) (“The parent has abandoned the child.”).

I. We review private termination proceedings de novo. *In re G.A.*, 826 N.W.2d 125, 127 (Iowa Ct. App. 2012). We give deference to the factual findings of the trial court, especially those of witness credibility, but we are not bound by those determinations. *Id.* Our primary concern in termination proceedings is the best interests of the child. Iowa Code § 600A.1.

II. The child was born in August 2009 and has continuously resided with the mother. The mother filed a petition to terminate the father’s parental rights. At the termination trial, the mother testified the father had never provided financial support. The mother testified that on more than one occasion the father had been physically abusive to her while she was holding the child. She acknowledged the father had sent the child cards and letters while he was incarcerated, but testified that when he was not incarcerated he did not take an interest in the child.

The father, age twenty-nine, acknowledged he had never provided financial support for the child, even when he was working full time. The father has not seen the child since February 2011 because he has been incarcerated in relation to a domestic abuse assault against the mother.¹ The father testified he has sent the child cards and letters while incarcerated, and he intends to maintain a relationship with his child. He also testified he had completed his

¹ The conviction stems from an assault where the father kicked and hit the mother and threatened to cut the mother’s throat with a knife.

GED while incarcerated and would be completing a batterers' education program the following week, which was a condition of his release. Upon his release from an Iowa correctional facility, he will go to a Missouri correctional facility to serve additional time because the domestic abuse conviction was a violation of his parole related to a Missouri drug conviction. The father testified he has used illegal substances (marijuana, MDMA, and ecstasy pills) since he was a teenager, but claimed to have not used anything for "about five months before I got incarcerated."

The juvenile court terminated the father's parental rights, finding he had not maintained the necessary "substantial and continuous or repeated contact with the child" necessary to avoid a finding of abandonment. The court ruled the father's involvement in the child's life "has been relegated to some written communications," he had provided no financial support even when able to do so, and he had been absent from her life due to his own criminal actions.

The juvenile court also found termination was in the child's best interests because "[s]he deserves to grow up happy, safe, and away from the physical abuse that follows her father."

III. Pursuant to Iowa Code section 600A.1, "The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent." The provision continues,

In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life.

Iowa Code § 600A.1.

Section 600A.8(3) allows the termination of parental rights when “[t]he parent has abandoned the child.” “To abandon a minor child”

means that a parent . . . rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

Iowa Code § 600A.2(19). As pertinent here, a parent is deemed to have abandoned a child who is six months or older “unless the parent *maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support* of the child of a reasonable amount, according to the parent’s means” *and* “[v]isiting the child at least monthly when physically and financially able to do so” or by “[r]egular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child.” *Id.* § 600A.8(3)(b) (emphasis added).

The father contends his attempts to contact the child when he was not incarcerated were thwarted by the mother. He blames the mother, too, for his lack of financial support when he was working, contending she did not communicate the child’s needs.

Upon our de novo review of the record, we agree with the juvenile court that the father’s stated interest in maintaining a relationship with his child is not accompanied by affirmative parenting to the extent practical and feasible in the circumstances. See *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010) (“A parent may evince an intent to abandon the child even though the parent subjectively maintains an interest in the child if that interest is not accompanied

by affirmative parenting to the extent practical and feasible in the circumstances.” (internal quotation marks and citation omitted)). When not incarcerated, the father provided no financial support. See *In re W.W.*, 826 N.W.2d 706, 710 (Iowa Ct. App. 2012) (rejecting a mother’s argument that because she had not been court-ordered to support her children financially, her lack of monetary support did not constitute abandonment; “section 600A.8(3)(b) is not limited to court-ordered support”). We find his claim that he did not “know how to” attempt even minimal support in prison dubious.

Moreover, the father’s own criminal actions have kept him from his daughter for more than two years of her short life. See *In re G.A.*, 826 N.W.2d 125, 129 (Iowa Ct. App. 2012) (“The father must take personal responsibility for his own wrongful and criminal acts, and cannot use such acts as a justification for his lack of relationship with the child.”). And we find his asserted correspondence shows only a marginal effort to communicate, which does not constitute “substantial and continuous or repeated contact with the child” under section 600A.8(3)(b).

The father has not maintained a place of importance in the child’s life or affirmatively assumed the duties encompassed by the role of a parent. This three-year-old child has not seen her father in more than fifteen months and has never been financially or emotionally supported by him. Under these circumstances, we conclude termination of parental rights is in the child’s best interests. See Iowa Code § 600A.1.

We therefore affirm the termination of the father’s parental rights.

AFFIRMED.